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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
Party	Defendant Motorola, Inc. Motorola, Inc. 1303 East Algonquin Road Schaumburg, IL 60196
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Submission	Motion for Summary Judgment
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Date	12/14/2005
Attachments	Applicant's Motion for Summary Judgment Exhibit 2 Part 1 of 2 (1b of 4).pdf ( 79 pages )

# EXHIBIT 2

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant  
Opposition No.: 91/161,817  
Application No.: 78/235,618  
Mark: Sensory Mark (911 Hz Tone)

Exhibit 2 in Support of Applicant's Motion for Summary Judgment

IN THE UNITED STATES PAATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**COPY**

NEXTEL COMMUNICATIONS, INC., )

Opposer, ) Opp. No. 91/161,817

vs. ) App. No. 78/235,618

MOTOROLA, INC., ) Pot. Mark: SENSORY MARK

Applicant. ) (911 Hz tone)

The videotape deposition of DAVID ERIC KLEIN,  
called by the Opposer for examination, taken before  
RICHARD H. DAGDIGIAN, CSR No. 084-000035, a notary public  
within and for the County of Cook, State of Illinois, and a  
Certified Shorthand Reporter of said State, at the offices  
of Brinks Hofer Gilson & Lione, 455 North Cityfront Plaza  
Drive, Suite 3600, on the 19th day of Jul 2005, commencing  
at 10:15 a.m.

1 APPEARANCES:

2 CROWELL & MORING

3 BY: JOHN I. STEWART, ESQ.

4 KAREN C. HERMANN, ESQ.

5 1001 Pennsylvanie Avenue, NW

6 Washington, D.C. 20004-2595

7 (202) 624-2685

8 on behalf of the Opposer;

9  
10 BRINKS HOFER GILSON & LIONE

11 BY: THOMAS M. WILLIAMS, ESQ.

12 455 N. Cityfront Plaza Drive, Suite 3600

13 Chicago, Illinois 60611-5599

14 (312) 321-4717

15 on behalf of the Applicant.

16  
17 ALSO PRESENT:

18 CAROLYN E. KNECHT, ESQ.

19 Senior Counsel Trademarks,

20 and

21 KRISTEN POGGENSEE, Paralegal Associate,

22 Corporate Law Department

23 Motorola, Inc.

24  
25 DEAN MARIS, Legal Videographer

## I N D E X

THE WITNESS

EXAMINATION BY COUNSEL FOR

OPPOSER

APPLICANT

DAVID ERIC KLEIN

(By Mr. Stewart)

6

## E X H I B I T S

KLEIN DEPOSITION EXHIBIT

FOR IDENTIFICATION

No. 1	10
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1 THE VIDEOGRAPHER: Here begins the video deposition  
2 of David Klein, Tape One, Volume One, in the Matter of  
3 Nextel Communications, Inc. versus Motorola, Inc, in the  
4 United States Patent and Trademark Office before the  
5 Trademark Trial and Appeal Board, Opposer Number 91/161,817  
6 and Application Number 78/235,618.

7 Today's date is Tuesday, July 19, 2005, and the  
8 time on the video monitor is 10:15 a.m.

9 The video operator today is Dean Maris of  
10 Thompson Court Reporters located at One South Wacker Drive,  
11 Suite 1616, Chicago, Illinois 60606, and the phone number is  
12 312-346-3377.

13 The court reporter is Richard Dagdigian of  
14 Thompson Court Reporters.

15 Today's deposition is being taken on behalf of  
16 the opposer, and it is taking place at Brinks Hofer Gilson &  
17 Lione at 454 North Cityfront Plaza Drive, Suite 3600,  
18 Chicago Illinois, 60611.

19 Counsel will now introduce themselves and state  
20 the parties they represent after which the court reporter  
21 will administer the oath.

22 MR. STEWART: Good morning. I'm John Stewart, and  
23 this is my colleague, Karen Hermann. We are here from  
24 Crowell & Moring in Washington D.C., and we are here  
25 representing Nextel Communications.

1 MR. WILLIAMS: I'm Thomas Williams from the law firm  
2 Brinks Hofer Gilson & Lione, and I'm here on behalf of  
3 Motorola, Incorporated, the applicant.

4 DAVID ERIC KLEIN,  
5 called as a witness, having been first duly sworn by  
6 the Notary Public, was examined and testified as  
7 follows:

8 MR. WILLIAMS: I have a brief statement. Motorola  
9 objects to this discovery deposition being recorded on  
10 videotape.

11 First of all, the Board rules, <sup>T3MP</sup>~~FWMP~~ 703.01I  
12 states that, "A deposition must be submitted to the Board in  
13 written form. The Board does not accept videotape  
14 depositions".

15 Second, it was unclear from the notice of  
16 deposition which used the language "and/or" that this  
17 discovery deposition would be videotaped.

18 And, third, much of this witness' testimony will  
19 relate to confidential material.

20 We designate the entire videotape and the written  
21 transcript as "Confidential, Attorneys' Eyes Only" until we  
22 have had the opportunity to carefully review the testimony,  
23 including the videotape, and to modify any confidentiality  
24 designations appropriate.

1 MR. STEWART: Thank you for that statement.

2 EXAMINATION

3 BY MR. STEWART:

4 Q Good morning, Mr. Klein. Have you ever been  
5 deposed before?

6 A No, sir.

7 Q Well, then I'm sure that you have talked with  
8 your counsel about what will transpire today, but let me  
9 just describe to you a bit.

10 I'm going to be asking you questions with respect  
11 to issues that are -- that we have raised in our notice of  
12 deposition. And you are to provide me answers. Your  
13 answers are under oath.

14 I would ask that if you do not understand any  
15 question that I ask, please let me know that and I will see  
16 what I can do to clarify it for you.

17 If you need a break at any time, please let me  
18 know at the end of an answer to a question. And if you can  
19 do that, then we will see what we can do to accommodate you.

20 If you ever need to talk to your counsel, please  
21 finish a response to a question, if you are in the middle of  
22 a response, and then we can take a break for you to talk  
23 with your counsel, if that's necessary.

24 Please make sure that you provide your answers in  
25 an audible fashion. This is being recorded both by the



1 stenographer and on videotape.

2 A Okay.

3 Q Is there anything that we should know about that  
4 would make it -- that would hamper your ability today to  
5 answer questions completely and fully?

6 A Not that I'm aware of.

7 Q Okay. Then let's get started. Would you state  
8 your full name, please.

9 A My full name is David Eric Klein.

10 Q What is your position at Motorola?

11 A I am a marketing manager.

12 Q And how long have you been in that position?

13 A My current position I've been in for  
14 approximately three years.

15 Q And before that, were you with Motorola?

16 A Yes, sir.

17 Q How long have you been with Motorola?

18 A I've been with Motorola since May 22nd, 1995.

19 Q And what was your position prior to marketing  
20 manager?

21 A My position immediately prior to marketing  
22 manager was a marketing portfolio planner.

23 Q And how long were you a marketing portfolio  
24 planner?

25 A For two years.

1 Q And how about before that?

2 A Before that, I was an engineer in product  
3 development.

4 Q I see. And how long were you in that position?

5 A I was in that position or that former position  
6 for five years.

7 Q For five years. And that takes you back to 1995?

8 A Correct.

9 Q Okay. And where were you before Motorola?

10 A University of Florida.

11 Q What kinds of degree program?

12 A I got a bachelor's of science in electrical  
13 engineering specializing in digital design.

14 Q So you came directly -- was Motorola your first  
15 employment after receiving that bachelor of science in  
16 engineering?

17 A Yes, it was.

18 Q Okay. While you were an engineer in product  
19 development, was there a particular type of product that you  
20 worked on?

21 A During my stay as a product engineer, I developed  
22 the tools that were used to place information within the  
23 radio -- customer information, customized information.

24 Q And was that with respect -- was that with  
25 respect to a lot of different Motorola products or one

1 particular product line?

2 A It was specific to Motorola's Type 2 Trunking for  
3 Analog and their APCO Digital Trunking, in addition to  
4 variants of their conventional offering.

5 Q Now, currently, as a marketing manager, is that  
6 with respect to a particular product line?

7 A I'm currently a marketing manager for what is  
8 referred to as our High Tier Products; these products that  
9 do our Motorola Type 2 trunking, our APCO trunking and APCO  
10 Project 25 trunking, and variants of conventional  
11 operation.

12 Q Okay. Now, we are here today to take your  
13 deposition -- to take the deposition of Motorola pursuant to  
14 the notice of deposition which we reissued as a Re-notice of  
15 Deposition of Applicant Motorola, Inc.

16 Now, you understand you are here in a  
17 representative capacity speaking on behalf of Motorola  
18 itself?

19 A Yes, I do.

20 Q Pursuant to the rules, we have identified  
21 particular topics that we are interested in asking questions  
22 about.

23 And under the rules, you have been designated to  
24 address all of those topics. Do you understand that?

25 A I do.

1 MR. STEWART: I want to ask that the reporter mark as  
2 Klein Exhibit 1 a copy which I will hand you in just a  
3 moment of the re-notice of deposition of Applicant Motorola,  
4 Inc.

5 (Klein Deposition Exhibit  
6 No. 1 was marked as  
7 requested.)

8 BY MR. STEWART:

9 Q Would you take a minute to review that document  
10 and, in particular, the list of topics with respect to which  
11 we are going to be asking you questions, the subject matter  
12 categories.

13 A Okay.

14 Q Okay. Have you reviewed this Klein Exhibit 1  
15 previously?

16 A I have seen and read the document.

17 Q Okay. With respect to the subject matter  
18 categories that are numbered 1 through 15, are you the  
19 person at Motorola most qualified to discuss each of those  
20 topics?

21 MR. WILLIAMS: Objection. Under the rules, he  
22 doesn't necessarily have to be the person most qualified.  
23 He's being designated today on behalf of Motorola

24 BY MR. STEWART:

25 Q Are you prepared to address each of those 15

1 categories Mr. Klein?

2 A I'm prepared to the best of my knowledge to  
3 address the 15 categories.

4 Q Are there people within Motorola who would be  
5 more knowledgeable with respect to particular ones of these  
6 15 categories.

7 MR. WILLIAMS: Objection, that's vague and  
8 ambiguous.

9 BY MR. STEWART:

10 Q You may answer the question.

11 A I am unaware of specific people who would be  
12 readily available to answer all 15 elements.

13 Q Well, with respect to any particular ones of  
14 those, are there people in Motorola who are more qualified  
15 or have more information to answer questions about those  
16 particular topics?

17 MR. WILLIAMS: Objection, that's vague and  
18 ambiguous.

19 BY MR. STEWART:

20 Q Please answer the question.

21 A I do not know.

22 Q Okay. We will come back to that.

23 Now, to what extent have you had personal  
24 involvement in the facts underlying these subject matter  
25 categories?

1 MR. WILLIAMS: Objection to the extent that that  
2 question calls for revealing privileged communications  
3 between the lawyer and the client.

4 BY MR. STEWART:

5 Q Please answer.

6 A Will you repeat the question.

7 Q To what extent have you had personal involvement  
8 in the facts relating to each of these 15 topics?

9 MR. WILLIAMS: I instruct you not to answer to the  
10 extent that your answer would involve revealing  
11 communications that you have had with the lawyers or the  
12 Legal Department.

13 A I have read company documentation and seen  
14 company records related to the topics.

15 BY MR. STEWART:

16 Q With respect to the work that you have done for  
17 Motorola in marketing and as an engineer, have you -- were  
18 you involved in any of these subject matters?

19 A I have worked on products that include the 911  
20 Hz Tone.

21 Q Have you worked on any aspect of the creation,  
22 selection or incorporation of the 911 Hz Tone itself?

23 A Yes.

24 Q Explain how that has happened, please.

25 MR. WILLIAMS: Objection, that's vague.

1 BY MR. STEWART:

2 Q Answer, please.

3 A The tone is a standard within these products, and  
4 we have adhered to that standard.

5 Q And for you personally as an engineer, how has --  
6 how did you implement that adherence, or what exactly did  
7 you do with respect to the 911 Hz Tone itself?

8 A Can you clarify.

9 Q Yes. You said you worked on the creation,  
10 selection or incorporation of the 911 Hz Tone itself, is  
11 that correct?

12 A In current products, yes.

13 Q In current products, yes. Can you tell me  
14 exactly what your work consisted of? How did -- let me end  
15 it there.

16 A In the current products, my effort was specific  
17 to insuring that the products utilize the specific 911 Hz  
18 Tone as we have done in previous products for consistency.

19 Q And in doing so, how did you go about that?

20 A That included requiring the appropriate pitch and  
21 cadence of the tone; the inclusion of the description of the  
22 tone in manuals; verification that the operation overall of  
23 the products in the customers' hands when they used  
24 operations involving the tone matched previous products.  
25 That's pretty much it.

1           Q    First, you said requiring the appropriate cadence  
2   and tone for purposes of consistency, is that right?

3           A    Yes.

4           Q    In what capacity did you require that?

5           A    It is stipulated as a requirement to the  
6   products.

7           Q    In what form is that stipulation or that  
8   requirement stipulated?

9           A    The stipulation comes in the general form of the  
10   product that is being replaced must match functionality.  
11   The new product that's replacing the old product must match  
12   functionality. It's more of a blanket statement of  
13   operation.

14          Q    Is that in writing?

15          A    To the best of my knowledge, I believe it is.

16          Q    That it is in writing?

17          A    Yes.

18          Q    In what form?

19          A    Internal documents, a stipulation of definition  
20   of the products.

21          MR. STEWART:   We would ask if that document has not  
22   been produced to us, that it be produced to us at this  
23   point.

24                   Are you aware of whether that document has been  
25   produced.



1 MR. WILLIAMS: We will take that request under  
2 advisement.

3 MR. STEWART: Thanks. I'm sorry, go ahead.

4 A Nothing.

5 BY MR. STEWART:

6 Q Okay. Let me ask, have you reviewed all of the  
7 documents that were produced by Motorola to Nextel in  
8 response to Nextel's discovery requests in this proceeding?

9 A I am unsure. I have reviewed some -- I have  
10 reviewed documentation. I'm unsure if it's the full scope  
11 of documentation.

12 Q Was the stipulated requirement that you just  
13 described among the documents you reviewed?

14 A For the purpose of this activity, it was not part  
15 of the documents that I reviewed.

16 Q Did you review it separately?

17 A Yes, during natural job functions and activities.

18 Q When was that?

19 A Over the last two or three years of actual job  
20 functions, documentations that describe products are seen  
21 and reviewed.

22 Q So that was while you were in your position as  
23 marketing manager, correct?

24 A Between marketing manager and portfolio planner.

25 Q While you were an engineer, did you see such

1 stipulated requirement?

2 A I did not see stipulated requirement because  
3 those stipulated requirements were not in the particular  
4 documentation I worked with on a day-to-day basis.

5 Q Why not?

6 MR. WILLIAMS: Objection, that's vague.

7 A I need a little bit of clarity.

8 BY MR. STEWART:

9 Q What were you working on that was different?

10 I'm sorry, were you working on some area of  
11 functionality of the devices that was different from that  
12 that included the 911 Hz Tone?

13 A I worked on a PC based application software that  
14 placed configuration information into the products.

15 So I was not part of the group that developed the  
16 911 tone for particular products.

17 I was a person who worked on a slightly different  
18 aspect of the overall delivery of the products.

19 Q You mentioned that you had reviewed documents.  
20 What else have you done to prepare yourself for the  
21 deposition today?

22 MR. WILLIAMS: Objection. To the extent that your  
23 answer would reveal communications between the lawyers and  
24 yourself, I instruct you not to answer.

25 A I reviewed user manuals, I reviewed product

1 description documents. These would be internal documents  
2 that Engineering uses to describe the products.

3 And I looked at training information in reference  
4 to the frequency tone, had discussion with Motorola  
5 employees concerning the frequency tone.

6 BY MR. STEWART:

7 Q With which Motorola employees did you speak?

8 A Mitch <sup>Leshin</sup> ~~Leshin~~, <sup>Leshin</sup> ~~Leshin~~, I believe, and Dave  
9 Mills.

10 Q And what are their positions in Motorola?

11 A They are engineering managers.

12 Q Are they managers with respect to particular  
13 product lines?

14 A They are managers with product lines that I'm  
15 directly related to, which would be Motorola Type 2  
16 Trunking, Astro -- the APCO Trunking and APCO Project 25  
17 Trunking, and other forms of conventional operation.

18 Q And if you know, how long have they been with  
19 Motorola?

20 A I do not know their tenure at Motorola, the  
21 length of it.

22 Q Why did you speak with them?

23 MR. WILLIAMS: Object to the extent that your answer  
24 calls for revealing communications between the lawyers and  
25 yourself.

1           A    I spoke with both gentlemen in concern with  
2   general availability and engineering effort to support and  
3   interact with the 911 Hz Tone.

4           BY MR. STEWART:

5           Q    What do you mean by availability?

6           A    I guess implementation would be a more  
7   appropriate term. How they implemented the tone in  
8   different products.

9           Q    Did you talk to them with respect to 911 Hz Tone  
10   products that are not current products?

11          A    I spoke with them about previous 911 Hz Tone  
12   products.

13          Q    Did they have direct knowledge of previous 911 Hz  
14   Tone products?

15          A    Mitch <sup>Leshin</sup>~~Leshin~~ had knowledge about previous 911 Hz  
16   Tone products.

17          Q    And Dave Mills did not?

18          A    Not beyond common knowledge of the 911 Hz Tone  
19   products.

20          Q    Did you do anything else to prepare?

21          A    Not beyond my daily job functions and my own  
22   personal history and interaction with the products, no.

23          Q    Did you speak to anyone other than Mitch <sup>Leshin</sup>~~Leshin~~  
24   and Dave Mills?

25          MR. WILLIAMS:   Objection to the extent your answer

1 would call for revealing communications between the lawyers  
2 and yourself.

3 A I did speak with Marlon Moo-Young, M-o-o -  
4 Y-o-u-n-g, Marlon Moo-Young, concerning his understanding of  
5 the tone. He -- I worked with him on understanding the  
6 tone.

7 I have spoken to his manager, Tim Quirey,  
8 concerning the tone.

9 BY MR. STEWART:

10 Q How do you spell Quirey?

11 A Q-u-i-r-e-y, I believe.

12 Q What are their respective positions?

13 A Marlon Moo-Young manages the engineering support  
14 team, assisting customers in the field, and Tim is his  
15 manager for that organization.

16 Q Did you obtain any documents from any of these  
17 four individuals?

18 A Not that I'm aware of. In other words, no --  
19 they turned over no documentation to me for -- for this  
20 tone.

21 Q Did you take notes of your conversations with  
22 them?

23 A I do have notes. I do have notes that Mitch and  
24 I -- Mitch and I had a conversation with.

25 MR. STEWART: We would ask for the production of

1 those notes.

2 MR. WILLIAMS: We will take that under advisement.

3 BY MR. STEWART:

4 Q Did you talk with any other individuals?

5 A Specifically about the 911 Hz Tone, let me think.  
6 I had spoken to our Training Department, specifically one of  
7 our training developers, Janice Morey; M-o-r-e-y is her last  
8 name.

9 She is, for lack of a better term, an author of  
10 our -- of our user guides and training material.

11 Q What did you discuss with her?

12 A The presence of training information related to  
13 the 911 Hz Tone.

14 Q And did you collect documents from her?

15 A Yes, I did.

16 MR. STEWART: We would ask for those documents, to  
17 the extent they haven't already been produced, or for their  
18 identification if they have already been produced.

19 MR. WILLIAMS: We will take that under advisement.

20 BY MR. STEWART:

21 Q Did you take notes of your conversations with  
22 Janice Morey?

23 A No, I did not.

24 Q Did you talk with other individuals?

25 A No, I actually never did -- there would be -- I

1 was directed to, oddly enough, Dave Klein, as he manages the  
2 Training Department, but he was out of town.

3 Q And is that the only other person you tried to  
4 speak with in preparing for this deposition?

5 A I was directed to Monica Gingells -- don't ask me  
6 to spell it -- and who I never really had a chance to have  
7 any conversation with either.

8 Q And what's her position?

9 A My assumption is she is assisting in management  
10 of the Training Department while David Klein is on vacation.  
11 That is merely an assumption.

12 Q Okay. Are there any other individuals you spoke  
13 with in preparing for the deposition?

14 A I did speak with Mary <sup>Pittman</sup> ~~Pitman~~.

15 Q Who is that?

16 A She handles our -- I'm not really sure what her  
17 actual title is. She handles -- if we sell products to an  
18 integrator company, something like that.

19 Q So she is in sales?

20 A Not that I'm aware of. As near as I know, she is  
21 just part of the North American Business Team. That's our  
22 title for that group.

23 Q Any other individuals?

24 A Not that I'm aware of.

25 Q Did you collect documents from Mary <sup>Pittman</sup> ~~Pitman~~?

1 A No, I did not.

2 Q Did you take notes of conversations with her?

3 A Verbal only.

4 Q So the answer is no?

5 A No.

6 Q Then let me read you the list we have just gone  
7 through.

8 Mitch Leshim, Dave Mills, Marlon Moo-Young, Tim  
9 Quirey, Janice Morey, and Mary Pitman were the individuals  
10 you identified as people you talked to in preparing for this  
11 deposition?

12 A Correct.

13 Q Any others come to mind?

14 A None that I'm aware of.

15 Q And when did these conversations take place  
16 roughly?

17 A In the last two weeks or so.

18 Q Did you speak with anyone in sales or marketing?

19 A You would have to define marketing because we  
20 have a -- different definitions of marketing within our  
21 organization.

22 Q I would like to get all the details of that, but  
23 did you talk with anybody who was involved in sales or  
24 marketing activities or responsibilities in a general sense?

25 A Yes, I did. Yes, I did. I did speak with Linda



1 Serges.

2 Q How do you spell her name?

3 A S-e-r-g-e-s, I believe. She is -- she does  
4 management for some of our promotional trade show and user  
5 interaction groups.

6 Q and did you collect documents from her?

7 A Yes, I did.

8 MR. STEWART: We ask that those be produced or  
9 identified if they have already been produced.

10 MR. WILLIAMS: We will take that under advisement.

11 BY MR. STEWART:

12 Q Did you take notes of any conversations with her?

13 A No, I did not take any notes of our conversation.  
14 It was strictly verbal.

15 Q Any other people that now come to mind?

16 A It's been a busy few weeks. I did speak with Joe  
17 Balchune, B-a-l-c-h-u-n-e, I believe. I should know this.

18 And he identified, in association with  
19 conversations with Mary <sup>Pittman</sup> ~~Pitman~~ -- he identified, again,  
20 products that we have sold to integrators.

21 Q Define product integrators or integrators in this  
22 context.

23 A Companies who purchase products from us to be  
24 integrated into a larger product or a larger final product.

25 Q All right. We have added these two -- two

1 additional names, Linda Serges and Joe Balchune.

2 Did you speak with any other individuals in  
3 preparing for the deposition?

4 A No, no.

5 Q Okay. Did you communicate with any of these  
6 people or others by e-mail in preparing for this deposition?

7 A I did communicate with multiple of those people  
8 via e-mail.

9 MR. STEWART: All right. And we would ask for those  
10 e-mails to be produced.

11 MR. WILLIAMS: We will take that under advisement.

12 BY MR. STEWART:

13 Q Did you communicate by e-mail to any other  
14 individuals?

15 A Concerning the 911 Hz Tone?

16 Q Uh hum.

17 A Not that I'm aware of.

18 Q Did you speak with anyone who was responsible for  
19 engaged in advertising activities?

20 A That would be -- please identify your concept of  
21 advertising.

22 We do it in a multitude of ways.

23 Q Well, you've talked about promotion and trade  
24 shows and user interaction groups.

25 Let me come back to that when I talk more

1 specifically about the advertising. I think it will be  
2 clearer if we break it all down.

3 But with respect to any kinds of marketing and  
4 promotion, are Linda Serges -- is Linda Serges the only  
5 person you spoke with in preparing for this deposition?

6 A Linda Serges is the only person I spoke with as  
7 far as managing trade shows, promotional events and user  
8 groups.

9 Q And what -- who else did you speak to with  
10 respect to other kinds of marketing activities?

11 A Our training organization develops tools as such,  
12 so it would be Janice Morey.

13 MR. STEWART: Okay. All right. I would like to  
14 have marked as Klein Exhibit 2 the file history reflecting  
15 the PTO records on the Motorola application for trademark  
16 registration for the 911 Hz Tone.

17 (Klein Deposition Exhibit  
18 No. 2 was marked as  
19 requested.)

20 BY MR. STEWART:

21 Q Have you ever seen this -- I'm sorry, continue  
22 reviewing the document.

23 Have you seen this document before?

24 A No, I have not.

25 Q All right. If you would turn to the very last

1 page of this document which is labeled MOT 002015 -- do you  
2 see that?

3 A Yes, I do.

4 Q Do you see in the identification of  
5 "Goods/Services" down in the left hand column there, an  
6 indication that goods and services are two-way radios,  
7 immediately to the right of that?

8 A I do see that.

9 Q Now, are you aware of the scope of the rights  
10 being sought in this registration application?

11 MR. WILLIAMS: Objection, that calls for a legal  
12 conclusion. This is a fact witness.

13 BY MR. STEWART:

14 Q You may answer.

15 A I do not know the full ramifications of this  
16 statement.

17 Q If you -- in Klein Exhibit 1, which is the  
18 re-notice of deposition that we showed you before, you have  
19 a defined term on Page four, the definition numbered eight.  
20 Do you see that there?

21 A Correct.

22 Q That's a definition of the 911 Hz Tone products.

23 A Okay.

24 Q And we have defined that as meaning the goods  
25 that are being applied for which registration is being

1 applied for by Motorola in this 911 Hz proceeding, okay?

2 A Okay.

3 Q Now, using that as a basis, I would like to talk  
4 with you about kind of the nomenclature and the way you  
5 understand the nature of those products.

6 A So for clarification, you are asking me to --  
7 when we discuss two-way radios, that I am to assume the  
8 definition to be 911 Hz Tone products?

9 Q I want to do it the other way around. The 911 Hz  
10 Tone products, for purposes of our discussion right now, and  
11 throughout this deposition, unless we revisit this, is going  
12 to refer to all the Motorola products identified as two-way  
13 radios for which the registration application has been  
14 filed.

15 MR. WILLIAMS: I'm going to renew my objection based  
16 on the fact that he's a fact witness, and he's not  
17 designated to testify about the Patent & Trademark Office  
18 identifications of goods and services.

19 BY MR. STEWART:

20 Q I'm sorry. Go ahead.

21 A So when you stipulate two-way radios, I'm to  
22 assume you are referring to 911 Hz Tone products? Is that  
23 my understanding?

24 Q I'm going to be using 911 Hz Tone products to  
25 refer to whatever it is that Motorola is seeking the

1 registration to cover in this proceeding.

2 A Okay.

3 Q Do you have an understanding yourself of what is  
4 meant by 911 Hz Tone products?

5 A I do.

6 Q What is that understanding?

7 A My understanding of this term is that it is a  
8 product that produces a particular cadence at a pitch of 911  
9 Hz or thereabouts, and it represents two things within the  
10 products.

11 One is, the audio path is open and the <sup>microphone</sup>  ~~mike~~  is  
12 available to transmit the audio spoken, and that it refers  
13 to Motorola products.

14 Q Are there any products manufactured by --  
15 manufactured or sold or offered for sale by Motorola that  
16 incorporate the 911 Hz Tone, this particular sound that you  
17 have described, but are not two-way radios?

18 A None that I'm aware of.

19 Q Are you generally aware of all of the Motorola  
20 products that incorporate this 911 Hz Tone?

21 A I am not an expert in all Motorola products. I  
22 have familiarity with the products that are associated with  
23 the GEMS, G-E-M-S -- GEMS organization within Motorola.

24 Q What is the GEMS organization?

25 A Specifically a business organization within

1 Motorola who -- who sells our definition of two-way  
2 products.

3 Q And what is that definition of two-way products?  
4 I'm sorry, what does your definition of two-way products  
5 encompass?

6 A My definition of two-way products encompasses  
7 private or leased radio systems, hand-held devices, and  
8 dispatch centers that allow for immediate group dispatch or  
9 direct unit-to-unit communications.

10 Q Do you use the distinction indirect or direct  
11 communications devices in this context?

12 A Those are internal nomenclature for the overall  
13 market.

14 Q And what do those two terms mean in this context?

15 A Indirect specifically is a portion of our  
16 business where we sell to shops, businesses, such that they  
17 can lease out equipment to other users, essentially  
18 intermediates, organizations, private organizations that we  
19 sell to; and then they either resell or lease or rent,  
20 versus direct, where we have a direct customer interaction  
21 with the sales force.

22 These customers are larger customers that will  
23 own their own private systems, maintain their systems.

24 Q Do the -- you identified three, if I understood  
25 this correctly, three categories of two-way products within

1 the GEMS organization. The first was private or leased  
2 radio systems, the second was hand-held devices, third was  
3 group dispatch systems and devices?

4 A Group system dispatch and devices are more of an  
5 attribute to the hand-helds.

6 They also -- there is also an organization or a  
7 group of products that are for dispatch centers such that it  
8 is still a two-way, but is a two-way product, but it's  
9 within, say, a building or actually mobile.

10 Q Is that covered within the GEMS organization?

11 A Yes, it is.

12 Q And that's within the scope of the products that  
13 you are considering the 911 Hz Tone products?

14 A I have more familiarity with the hand-held or the  
15 mobile products, whether it's hand-held or whether it's  
16 installed in a vehicle, than I do of the infrastructure and  
17 dispatch groups.

18 But I have some working familiarity with those  
19 organizations as per my job.

20 Q Are any of these categories of two-way products  
21 -- do any of them, I'm sorry, operate in a direct hand-held  
22 to hand-held communication path as opposed to through a  
23 central control or network?

24 A For our term, we refer to that as infrastructure.  
25 A significant number of -- I take that back.



1           Currently, to the best of my knowledge, all of  
2   the products that we make available for sale on indirect and  
3   direct markets support a direct unit-to-unit without --  
4   without going through a system or infrastructure.

5           Now, not all features are available, but they do  
6   operate.

7           Q   Do any of the products encompassed within this  
8   business organization operate solely in a unit-to-unit mode?

9           A   Can you repeat the question.

10          Q   Do any of the two-way products that you have  
11   described as being within the GEMS organization operate  
12   solely in a unit-to-unit mode?

13          A   Yes. There are a number of lower cost, lower  
14   priced products that operates only in a unit to unit method.

15          Q   Now, does the GEMS organization also produce or  
16   sell products other than two-way products?

17          A   GEMS, to the best of my knowledge -- it goes back  
18   -- I cannot fully categorically answer that because of the  
19   definition of what is a two-way radio.

20          We have products that operate, sending and  
21   receiving messages, which constitutes a two-way product, so  
22   I'm not sure how to respond to that given verbiage.

23          Q   You are distinguishing between two-way products  
24   and two-way radio products, do I understand you correctly?

25          A   Well, I don't -- I guess I need to understand the

1 question. You -- can you repeat the question.

2 Q Is the GEMS organization responsible for  
3 producing or selling products other than two-way products?

4 A We do sell data products. They again work under  
5 the same principle of two-way products, so I don't know if  
6 there is a distinction between those.

7 Q I want to come around and ask you in the end,  
8 then, does every two-way product sold -- produced by and  
9 sold by the GEMS organization include the 911 Hz Tone?

10 A The products that generate that tone are trunking  
11 infrastructure utilized products.

12 If a product utilizes or has the opportunity to  
13 utilize that function, those products can generate a 911 Hz  
14 Tone.

15 Q So there are additional products, two-way  
16 products that do not use the 911 Hz Tone within the GEMS  
17 organization?

18 A There are 911 -- there are two-way products that  
19 do not utilize the 911 Hz Tone.

20 Q Can you identify those products?

21 A Specifically those products are products that are  
22 not designed to operate on infrastructure systems.

23 Q And this would include the lower priced  
24 unit-to-unit --

25 A Correct --

1 Q Products. Okay. So just to confirm, every  
2 product designed to utilize trunking infrastructure within  
3 the GEMS organization uses the 911 Hz Tone?

4 A For clarity, every voice product.

5 Q And with that clarification, that was a true  
6 statement that I made, is that correct?

7 MR. WILLIAMS: Objection, that's vague and  
8 ambiguous.

9 BY MR. STEWART:

10 Q Let me restate it. Every voice product produced  
11 or offered for sale by the GEMS organization that is capable  
12 of utilizing trunking infrastructure incorporates the 911 Hz  
13 Tone, is that correct?

14 A That is a correct statement.

15 Q Are there other products produced or offered for  
16 sale by Motorola outside the GEMS organization that also use  
17 the 911 Hz Tone?

18 A Not that I'm aware of.

19 Q So Motorola currently manufactures 911 Hz Tone  
20 products, is that right?

21 A Correct.

22 Q And I would like now to talk about the overall  
23 organization of Motorola and how the GEMS organization fits  
24 within Motorola.

25 Is it one of a number of business units within

1 Motorola?

2 A The GEMS organization is one of, I believe, four  
3 -- is it four now -- four organizations.

4 Q What are the -- I'm sorry?

5 A Mobile Devices, Connected Home, the GEMS  
6 organization, and -- are we down to three now? We might be  
7 down to three. We've had some reorganizations.

8 Q Was the GEMS organization in place as far back as  
9 1991?

10 A The GEMS organization itself, under different  
11 names. We have, to my knowledge, added and removed business  
12 elements within the organization, but the organization  
13 itself has been there since 1991.

14 Q What are the prior names of the organization?

15 A CGISS, C-G-I-S-S. Before that, it was LMPS;  
16 before that, it was Land Mobile. I believe it was Land  
17 Mobile during the time of 1991, or it could have been the  
18 Communications Group -- Communications Sector. I'm not sure  
19 if that was before 1991 or not.

20 Q And has your position within Motorola always been  
21 within the GEMS organization or a prior -- a predecessor?

22 A Yes, I have worked throughout -- throughout my  
23 tenure within this organization.

24 Q Going back through the prior history of the GEMS  
25 organization, I want to ask you the same question I've asked

1 -- that we have now established, that is, no products  
2 produced by other organizations within Motorola used the 911  
3 Hz Tone. Was the same true for -- when the GEMS  
4 organization was constituted as CGISS?

5 MR. WILLIAMS: Objection, that's vague and  
6 ambiguous, and a compound question.

7 A Can you clarify -- can you give a little clarity  
8 to that?

9 BY MR. STEWART:

10 Q You've testified that no products created by  
11 Motorola outside the GEMS organization incorporate the 911  
12 Hz Tone, is that correct?

13 A Correct.

14 Q And that's as a current matter, correct?

15 A That is a current organization.

16 Q Was the same true with respect to the CGISS  
17 organization?

18 A Yes. There was no -- CGISS was the producer of  
19 911 Hz Tone products.

20 Q Was the same true with respect to the LMPS  
21 organization?

22 A Yes. There was no 911 Hz Tone products.

23 Q And was the same true with the Land Mobile Group?

24 A It is hard for me to answer that, in that it was  
25 before my time.

1 Q If you needed to find out the answer to that  
2 question with respect to Land Mobile, how would you go about  
3 finding the answer?

4 A For that specific -- for absolute validation,  
5 somebody involved with that at the time would be Mitch  
6 <sup>Leshin</sup>  
~~Leshin~~.

7 In a conversation he and I have had, I am -- with  
8 that as a premise, I am unaware of any products during that  
9 time that had the 911 Hz Tone outside of the Land Mobile.

10 Q Okay. Who is currently the head of the GEMS  
11 organization?

12 A The business president is Greg Brown.

13 Q Greg --

14 A Greg Brown.

15 Q Brown. And I would like you to give me the  
16 predecessor heads of these organizations if you know that.

17 A Okay. Before him was Bob Barnett. Bob Barnett  
18 was there for a while.

19 I couldn't clearly give you additional presidents  
20 of the sector. We were part of the CE sector -- or CE  
21 umbrella, so that -- what was his name, he came to visit us.  
22 I can't go beyond that.

23 That goes back to about 1997 or somewhere in  
24 there. That's as far as I can recall names.

25 Q Do you know who the head of the Land Mobile

1 organization was in 1991?

2 A I do not -- I am not aware of that.

3 Q You said that the GEMS organization is part of  
4 the CE umbrella, is that correct?

5 A In one of our many reorgs, the CE was a label  
6 that was given to a multitude of business units.

7 Q And who was the head of the CE structure?

8 A I cannot recall his name at this time.

9 Q What time -- during what years was the CE  
10 umbrella in place?

11 A I would be guessing if I was to tell you the  
12 exact timeframe.

13 Q Did it go back as far as 1991?

14 A No, sir.

15 Q Was it in place when you joined the company?

16 A No, sir. It was, to the best of my recollection,  
17 a 96, 97 timeframe of instantiation.

18 Q Is it still in place?

19 A No, it is not.

20 Q When did it go out of effect?

21 A I would be guessing at the time of the reorg. My  
22 best guess would be in the 1999, 2000 timeframe.

23 Q Is that when the GEMS organization was created?

24 A No, sir.

25 Q When was that?

1           A    The GEMS organization was created nine months  
2   ago, the label, and when it was associated with that  
3   acronym.

4           Q    When was -- when did CGISS come into effect?

5           A    CGISS was instantiated, to the best of my  
6   knowledge, in the end -- in the mid point of 2000.

7           Q    Now, does the GEMS organization support itself  
8   with -- in effect -- internal resources for marketing,  
9   sales, distribution?

10          A    To the best of my knowledge -- can you define  
11   internal, internal to --

12          Q    Let me start over and ask you to tell me. How is  
13   the GEMS organization itself structured internally?

14          A    We have a business unit, and we have an  
15   engineering unit and we have manufacturing units.

16          Q    And you are within the business unit?

17          A    Yes, I am.

18          Q    And what operations are encompassed by the  
19   business unit?

20          A    The business unit includes the -- the external  
21   sales force, our direct sales force who interact with  
22   customers. The business unit does the accounting, the  
23   financial management of the sales force, sales.

24                There is a marketing communication organization;  
25   there is a products definition marketing organization; and



1 that's kind of -- that seems to be the full scope of the  
2 groups.

3 Q What does the -- what responsibilities fall  
4 within the marketing communications organization?

5 A They are responsible for traditional  
6 communication messages, documentation associated with  
7 products.

8 They are responsible for managements of  
9 promotional and advertising events, and advertising  
10 documentation ads or -- items that appear, say, in a  
11 magazine or something, prints, in addition to customer  
12 interaction, promotions; in addition to management of trade  
13 show opportunities; in addition to supplies, whether it be  
14 material supplies or whether it be sponsoring events to help  
15 support the sales force interact with the customers.

16 Q How about broadcast advertising?

17 A Yes, any type of advertising that is associated  
18 with the GEMS organization, they would either -- my  
19 understanding is they are responsible for that. Whether it  
20 is internal or whether they have external firms, I'm  
21 unaware.

22 When we require communication messages, this is  
23 the organization that has responsibility.

24 Q What about competitive intelligence?

25 A Intelligence is handled within the business

1 units, not necessarily in the marketing communication  
2 organization.

3 Q How about brand management?

4 A Brand management is handled in two methods that  
5 I'm aware of, one being a consistent advertising  
6 presentation scheme of materials, and, then, a second in how  
7 we manage our portfolio from the business side, such that we  
8 keep a consistent message out with our products -- or a  
9 definition of our products.

10 Q Are you within one of these four organizations  
11 within the business unit?

12 A I'm within the product portfolio planning -- I'm  
13 not sure what term I used.

14 Q Product definition marketing organization?

15 A Yes.

16 Q Is there a separate head of the business unit as  
17 opposed to the heads of these four individual operations?

18 A Jim <sup>Sarallo</sup>~~Surelle~~ (phon.sp.) is the head of our North  
19 American Business Operations.

20 There is -- there are people who are in  
21 International Operations as far as business heads also.

22 Q And who is the head of the Marketing  
23 Communications Organization?

24 A Mary <sup>Botlie</sup>~~Botlie~~, ~~B-o-t-t-i-e~~. There might be two O's.

25 Q And who is the head of the Product Definition

1 Marketing Organization?

2 A For -- this becomes -- if we have a head for the  
3 subscribers, we have a head for infrastructure. The head  
4 for the subscriber is dualled. I believe it's Craig  
5 ~~Jenisek~~ <sup>Chenicek</sup> (phon.sp.) for the indirect market, and he might also  
6 be the business -- I'm not quite sure how they are organized  
7 at this time.

8 In the direct sales line of products, it's ~~Curt~~ <sup>Kurt</sup>  
9 Brasch, B-r-a-s-c-h or a-u-s-c-h.

10 Q And how about on the infrastructure side?

11 A There is -- I believe the gentleman's name is  
12 Randy Helm from a product planning type perspective. I'm  
13 not a hundred percent sure. We've had some reorgs around  
14 there also.

15 Q What does the product definition marketing  
16 organization do?

17 A We try to capture the needs of the user and,  
18 then, transfer that into a product definition and, then,  
19 insure that that product fits within the portfolio of  
20 products we want to offer and the set of customers we wish  
21 to appeal to.

22 Q Do you do this through research?

23 A We do this in several ways. One is research, one  
24 is just insuring that the current product is well replaced  
25 as far as a feature sets.

1           Then it's pretty much the two major ways; the  
2 research itself could be involving interaction with  
3 customers, our own internal understanding of things. It's  
4 different approaches.

5           Q    Have you ever -- or has this organization --  
6 sorry -- ever done research on the 911 Hz Tone itself?

7           A    Specific to the 911 Hz Tone, I am unaware of any  
8 research focused directly at that tone.

9           Q    Are you aware of any research results that are  
10 related directly to the 911 Hz Tone?

11          A    No research results. We have heard customer  
12 feedback in interviews. I am not aware if it's tangible  
13 documentation as far as notes taken and recorded, though.

14          Q    What's the nature of that customer feedback?

15          A    Training and understanding how the product works.  
16 If they are to replace a product, they need to know that the  
17 user is able to understand how to use and feels comfortable  
18 with it, and understands that they know it.

19          Q    And how did that customer feedback relate  
20 directly to the 911 Hz Tone?

21          A    We have, consistent with our tones, over the life  
22 of the products, specifically for -- the internal term we  
23 use is "Hands on, eyes off".

24               Customers, without focusing on the products,  
25 understand what's happening, understand when the ~~micro~~ <sup>microphone</sup> ~~phone~~ is

1 active. They are told in a consistent manner, and if they  
2 are using a Motorola product, there is an understanding that  
3 we -- that we have been consistent such that if they replace  
4 that Motorola product with another Motorola product,  
5 training of certain aspects of the radio are at a minimum or  
6 not even required.

7 Q Because they can use it in the same way as they  
8 have used prior products?

9 A They are able to -- they are very attuned to  
10 particular sounds, and it allows them to understand what's  
11 happening without them interacting.

12 So we have been consistent, and they are familiar  
13 enough with our products to know that tone means they can  
14 now talk.

15 Q Have you in the course of this product definition  
16 marketing organization's activities -- have you or others  
17 within the organization looked at competitors' products that  
18 are within the same product sector?

19 A We have -- we have reviewed competitors' products  
20 from a feature standpoint, aspects to how a bid is written  
21 or a request for proposal or request for bid, and we also  
22 analyze the products overall -- alterability, robustness;  
23 items that are very key to the customer, especially when  
24 they want a long lasting product, so key focus points we  
25 have on the durability, things like that.

1 MR. WILLIAMS: Are you ready for a short break?

2 A Yeah, I can use a little restroom break.

3 MR. STEWART: Great.

4 THE VIDEOGRAPHER: This is the Videographer. The  
5 time is 11:25 a.m. We are going off the record.

6 (Whereupon, a short recess was  
7 taken.)

8 THE VIDEOGRAPHER: We are back on the record. This  
9 is the Videographer. The time is 11:40 a.m.

10 BY MR. STEWART:

11 Q Is there a standard nomenclature within Motorola  
12 for identifying the function of the 911 Hz Tone and other  
13 tones generated by your products?

14 A Can you clarify.

15 Q You used some verbiage which I didn't write down  
16 before to identify what it is that the 911 Hz Tone signifies  
17 to a user of one of your radios, is that right?

18 A Correct.

19 Q Could you repeat that language. I will write it  
20 down this time.

21 A The 911 Hz Tone signifies the microphone --  
22 either the channels available for communication or that the  
23 microphone is active and transmitting.

24 So it allows the user to understand that. In  
25 addition, they know that when they hear that tone, that tone

1 is coming from a Motorola product.

2 Q Just a second on that. How do they know that  
3 it's coming from a Motorola product?

4 A There is a variety of ways. Motorola trains end  
5 users specifically in the tone; tones mentioned in end user  
6 documentation manuals, user guides.

7 The tone is heard at trade shows and in other  
8 events. Motorola provides a system that is at a trade show  
9 and be able to show the radio is communicating on the  
10 infrastructure, and that tone is audible there.

11 There is many -- many times, the sales folks will  
12 visit a customer and bring new products, and they can  
13 configure their products such that they can operate on the  
14 system and, then, they can show the customer the new  
15 products, and that -- and that tone, that audible tone is  
16 heard during the transmission attempts.

17 Q And is that all?

18 A Let me think. Manual, training, trade shows.  
19 There is -- to the best of my knowledge, I believe that's --  
20 that's my understanding of the association.

21 And in addition to the -- you know -- the  
22 Motorola products themselves make the tone; the emblem or  
23 the embossed label, the product is there.

24 As a matter of fact, we go through effort to make  
25 sure it can't be worn away. It appears multiple times on

1 the product such that when you hear that tone, you are  
2 presented with the Motorola label, the trademarks, the  
3 bat wing emblem, things like that.

4 So it's been that way for a while. So the  
5 repetition of the products, the repetition of the training,  
6 the consistencies are kind of the -- of that linkage.

7 Q Is that all?

8 A To what I can recall right now, yes.

9 Q If you recall anything further, please let me  
10 know.

11 A Okay.

12 Q You said that customers know it's from a Motorola  
13 product. And you listed these as ways in which a customer  
14 might know that.

15 Do you have any direct evidence that customers do  
16 know that the tone is emanated -- that the tone is a  
17 Motorola tone?

18 A I have no research statements that says that's  
19 fact. It's -- I don't have any research that gives that  
20 fact.

21 Q Do you have any other evidence that would  
22 demonstrate that a customer actually knows that this tone is  
23 a Motorola tone?

24 A From my own personal job related experience,  
25 explicitly it's been interaction with customers who do not



1 refer to it as their radio, but refer to it as their  
2 Motorola radio and, you know, the use of it -- when talking  
3 with them, you know, statements about what sounds it makes,  
4 was it explicit to a 911 tone? No, it was with reference to  
5 the tones that it makes.

6 Q Are you aware whether any other -- whether any  
7 product manufactured by any other manufacturer emits the  
8 same tone?

9 A Define "manufactured".

10 Q I'm stumped. Well, are you trying to distinguish  
11 between manufacturing and assembling, or what?

12 A Integrators --

13 Q Integrators?

14 A We have integrators.

15 Q Who buy Motorola manufactured devices and then  
16 sell them as part of a system, is that what you are talking  
17 about?

18 A Integrators that would purchase a Motorola radio  
19 with -- you know -- with our understanding that they would  
20 be placing it in either their product or a helicopter or  
21 something like that.

22 Q In those situations, is the radio branded as a  
23 Motorola radio, or by the integrator?

24 A I am not sure in all cases. For a particular  
25 case, it is branded as their products on the face of the

1 products -- an E. F. Johnson portable radio, mobile radio.

2 Q Beyond that, that kind of situation, are you  
3 aware of other manufacturers who produce products that emit  
4 a 911 Hz Tone?

5 A No, I'm not aware of any other.

6 Q Have you ever attempted to determine whether  
7 there was any such product?

8 A I myself have not actively sought to investigate  
9 that occurrence. I personally have not.

10 I am not aware -- to the best of my knowledge,  
11 I'm not aware if other people have actively investigated  
12 that.

13 Q Who would you ask if you wanted to find out  
14 whether Motorola -- anyone within Motorola had sought to  
15 determine that fact?

16 A I'm not a hundred percent sure. I would probably  
17 ask members -- or people who are involved with our  
18 Competitive Information Group.

19 Q Who are they?

20 A I specifically interface with Andres LaCambras.  
21 I can't spell that.

22 Q And he's within GEMS?

23 A Yes, he is.

24 Q By the way, GEMS is an acronym, is that correct?

25 A Yes it is.

1 Q What's it stands for?

2 A Government and Enterprise Mobile -- I think it's  
3 Mobile Solutions.

4 Q Okay. Fair enough. Which of the four  
5 organizations -- I'm sorry, let me start over.

6 The Competitive Information Group, is that within  
7 a business unit of GEMS?

8 A It is handled within the business unit of GEMS.

9 Q And what organization within the business unit?

10 A I'm not a hundred percent sure. There are --  
11 there is different people who help on different things.

12 Q Okay. Going back to my first question, the  
13 function that is represented by the 911 Hz Tone as used in  
14 the Motorola products is that the channel is available for  
15 communication or the microphone is active and transmitting,  
16 is that right?

17 A Correct.

18 Q Is there a short version of that that you use to  
19 describe that function in your devices?

20 A The training manuals and the user guide speak to  
21 it in two different ways, depending upon the group that  
22 these manuals are designed for.

23 One refers to it as the Talk-<sup>Permit</sup>~~Permits~~ tone, and  
24 one of it refers to as the Call-Back tone.

25 Q What's the difference between those two?

1           A    The Talk-Permit tone says that you pressed the  
2   PTT button, the push-to-talk button, and the channel is  
3   available, and the microphone is enabled or active for a  
4   Talk-Permit tone to occur.

5           So once the radio is in that state of Talk-Permit  
6   tone, the radio plays the Talk-Permit tone or gives the  
7   Talk-Permit tone.

8           Q    Now, do these 911 Hz Tone products -- those are  
9   the two-way radios we have been talking about --

10          A    Okay --

11          Q    Also emit other tones?

12          A    Yes, they do.

13          Q    How many?

14          A    Somewhere in the range of nine to 12 different  
15   tones.

16          Q    And what are the functions that these other tones  
17   serve?

18          A    They range from -- there is no -- there is no  
19   channel available during communication, so it's a -- it's a  
20   Talk-Prohibit tone, to items like low battery.

21          Q    And do you engage in the same effort to make sure  
22   that successive generations of two-way radio products use  
23   the same tones for consistent functional references?

24          A    Yes, we do.

25          Q    And so these other tones have also been kept

1 consistent over years of two-way radio products?

2 A Yes, they have.

3 Q Was the 911 Hz Tone itself originally created by  
4 Motorola?

5 A To the best of my knowledge, yes, it was.

6 Q When?

7 A To the best of my knowledge, it was developed  
8 during the 1983-1984 product developments efforts.

9 Q What product development effort was that?

10 A It was for the MTX 300T.

11 Q What kind of product was that?

12 A It was -- it was the trunking -- or, you know, it  
13 was a radio that worked on one of the initial Motorola  
14 infrastructure systems.

15 Q Had there been prior products produced by  
16 Motorola that served that same function?

17 A Not to my knowledge. When you say "same  
18 function", give me a little bit of clarity.

19 My response was not a trunking based product. I  
20 wasn't quite sure if that's what you were referring to.

21 Q Okay. So that was the first trunking based  
22 two-way radio product produced by Motorola?

23 A That I'm aware of.

24 Q And how was the 911 Hz Tone created?

25 MR. WILLIAMS: Objection, that's vague.

1           A    A little bit of clarity, please.

2           BY MR. STEWART:

3           Q    Who created the tone?

4           A    The tone was developed between the business --  
5   the business people at the time and the engineering staff  
6   that was developing the tone.

7           Q    Who were the business people involved?

8           A    I do not -- I do not know.

9           Q    Have you attempted to find out who they were?

10          A    I did attempt. I do not have any information to  
11   that point.

12          Q    How did you -- what were your attempts?

13          A    My attempt was speaking with Marlon Moo-Young.

14          Q    Why did you ask him?

15          A    Marlon supports our field products, and the hope  
16   was he potentially had some of the legacy product  
17   documentation available.

18          Q    Is that documentation that would have identified  
19   who the individuals were who developed the tone?

20          A    That was the hope.

21          Q    Did he have such documents?

22          A    No, we did not.

23          Q    Did he have any personal recollection of the  
24   facts that you were looking for?

25          A    He had knowledge of the tone itself in

1 relationship to the MTX 300T.

2 Q What was the basis of that information? I'm  
3 sorry, had he worked on that product?

4 A I do not know.

5 Q What did he tell you about the use of the tone in  
6 relation to the MTX 300T?

7 A That it was the first product to carry it, and it  
8 was ~~it was not~~ MTX 300T came out and, then, it was a  
9 follow-on update to it, if you would, carried the tone, and  
10 that was the initiation of the tone itself as far as  
11 availability.

12 Q Do you know who the engineering people were who  
13 were involved in the development of the tone?

14 A No, I do not.

15 Q Did you seek to find out who they were?

16 A Yes, I did.

17 Q How did you do that?

18 A I went to speak with Marlon.

19 Q Did he refer you to anyone else as a possible  
20 source for this information?

21 A He was unsure of who would have had that specific  
22 information on the MTX 300T.

23 Q Did he suggest any names?

24 A He suggested Rick Lehman.

25 Q Who is that?

1           A    Rick Lehman was the -- was the release manager  
2   for the products, the release manager being defined as the  
3   person who insured what the date was for the product's  
4   release, and that the product met all goals to be released.

5           Q    And did you talk with Rick Lehman?

6           A    I did not.

7           Q    Did you seek to talk to Rick Lehman?

8           A    I did.

9           Q    And what happened?

10          A    He was unavailable every time I went to speak  
11 with him.

12          Q    Did you try to track this information down  
13 through anyone else?

14          A    I did.

15          Q    Who was that?

16          A    I seeked out -- or sought out, I should say,  
17 <sup>Leshin</sup>  
17 Mitch ~~Leshin~~. He was not able to shed any light on the  
18 particulars of the MTX 300T.

19          Q    Is Rick Lehman still with Motorola?

20          A    Yes, he is.

21          Q    What's's his position?

22          A    He is a quality manager.

23          Q    Within GEMS?

24          A    Yes, he is.

25          Q    Is he within the engineering?



1 A Yes, he is.

2 Q Okay. One further question. You talked about  
3 the integrators' use of the Motorola manufactured mobile  
4 radios with -- you used the example, E. F. Johnson branding  
5 on the radio itself, is that right?

6 A Correct.

7 Q And do you know whether that radio emits the  
8 911 Hz Tone?

9 A I do believe it emits the tone. I do believe --  
10 I have not heard the tone, but I do believe it emits the  
11 tone.

12 Q Are there other integrators who operate in the  
13 same fashion?

14 A I do not have direct understanding of how other  
15 integrators operate. They purchase material from Motorola.  
16 That's the extent of my knowledge of other integrators.

17 Q Do you know whether Motorola has a license  
18 agreement with E. F. Johnson for the use of the 911 Hz Tone?

19 MR. WILLIAMS: Objection. That calls for a legal  
20 conclusion. This witness is a fact witness.

21 BY MR. STEWART:

22 Q You may answer.

23 A I don't know.

24 Q Do you know whether Motorola has any license  
25 agreements with anyone for the use of the 911 Hz Tone?

1 MR. WILLIAMS: Same objection. That calls for a  
2 legal conclusion. This is a fact witness.

3 A Again, I do not know.

4 BY MR. STEWART:

5 Q Did you try to ascertain whether Motorola had  
6 such license agreements?

7 A I did.

8 Q How did you do that?

9 A By speaking with Mary <sup>Pitman</sup>~~Pitman~~.

10 Q And what did you learn from Mary <sup>Pitman</sup>~~Pitman~~?

11 A Quite honestly, nothing.

12 Q What did she say about whether Motorola had  
13 license agreements in place for the use of the 911 Hz Tone?

14 MR. WILLIAMS: I'm going to object and instruct you  
15 not to answer to the extent this involved communications  
16 with lawyers.

17 A I can't answer.

18 BY MR. STEWART:

19 Q Is Mary Pitman a lawyer?

20 A I don't know.

21 MR. STEWART: Counsel, will you allow the witness to  
22 answer this question?

23 MR. WILLIAMS: You can answer the question to the  
24 extent that it doesn't involve communications between  
25 yourself and the lawyers.

1 A Actually, I was being honest. I really don't  
2 know. I do not believe she is, but I do not know.

3 BY MR. STEWART:

4 Q I'm going to ask you then to answer my question  
5 specifically, did Mary <sup>Pittman</sup> ~~Pitman~~ tell you -- what did Mary  
6 <sup>Pittman</sup> ~~Pitman~~ tell you with respect to whether Motorola had license  
7 agreements in place for the use of 911 Hz Tone?

8 A There was -- there was work that needed to be  
9 looked at. I mean, there was no answer.

10 Q Was she -- is she still working on developing  
11 that answer?

12 A I am not sure. I haven't seen any  
13 correspondence, but I have not been on my computer or  
14 anything, so I do not know.

15 Q And you exchanged e-mails with Mary <sup>Pittman</sup> ~~Pitman~~ on  
16 this subject?

17 A Yes.

18 MR. STEWART: I would ask for the production of  
19 those e-mails.

20 MR. WILLIAMS: We will take that under advisement.

21 BY MR. STEWART:

22 Q Do you know whether the 911 Hz Tone in its  
23 current configuration existed somewhere prior to the  
24 development of the MTX 300T product?

25 A Not that I'm aware of.

1 Q Is it your belief that someone within Motorola  
2 created it for the first time?

3 A Yes, that is my belief.

4 Q On what do you base that belief on?

5 A I base -- I base that belief on conversations  
6 with Marlon Moo-Young and with Mitch <sup>Leshin</sup> ~~Leshin~~.

7 Q And what did they tell you that led you to that  
8 belief?

9 A The creation of the tone itself has roots in the  
10 time aspects, when they were originally defining the  
11 trunking protocol. These time aspects were specific -- or  
12 were not known or stipulated before that effort.

13 Q Explain that a bit further, if you would. What  
14 time aspects are you referring to?

15 A The first radio was designed such that it would  
16 operate on a -- on this trunking protocol, a particular  
17 language used, communicates. There is expectations that  
18 information will be transmitted in a certain period of time  
19 .

20 These tones are based upon -- my understanding --  
21 a selection of certain groupings of these time periods in  
22 association with a particular selection of a pitch such that  
23 an <sup>aesthetic</sup> ~~esthetic~~ tone was created.

24 Q First, with respect to the time periods, are you  
25 referring to the duration of the entire time or the cadence

1 of the tone?

2 A The cadence.

3 Q And in what way is the cadence related -- I'm  
4 sorry, is the cadence then related technically to the  
5 transmission speed of the trunking protocol that was being  
6 put in place?

7 A Not technically. There is some relationship, but  
8 it's not technically related to.

9 Q In what way is it related?

10 A The radio was producing -- was producing events  
11 every 23 and a third milliseconds. They used that event and  
12 multiples of that ~~event~~ <sup>event</sup> to create their cadence.

13 Q I see. Is there any significance to the duration  
14 of the tone in its entirety?

15 A No.

16 Q Is there any significance to the number of sounds  
17 within the tone in its entirety?

18 A No.

19 Q Was the 911 Hz Tone ever produced at a different  
20 frequency?

21 A Can you clarify.

22 Q Was it ever a 900 Hz Tone?

23 A To the best of my knowledge, it has been anywhere  
24 between 909.9999 and 911 based upon just ~~Aaron~~ <sup>error in</sup> creating a  
25 frequency, but indistinguishable to the ear of the tone.

1           So the tone audibly has always come across as 911  
2 or -- at that particular frequency pitch.

3           Q    Was there any reason to select that range, 910 to  
4 911, as opposed to another frequency range for this tone?

5           A    It is my understanding that the frequency  
6 generator originally used in the MTX 300T was such that it  
7 could generate a frequency of 150, and they selected a  
8 six-times multiplier of that because of the <sup>aesthetic</sup> ~~esthetic~~ness of  
9 the tone.

10          Q    How did you learn this information?

11          A    This was again speaking with Marlon and with  
12 Mitch Leshim.

13          Q    So why -- if the frequency generated 150 hertz,  
14 911 is not a six-times multiplier of 150.

15          A    There is error to the -- to the item, and that's  
16 how it -- it's my understanding that's how they got to that  
17 frequency point.

18          Q    So is it -- was it designed to be 900 Hz, is that  
19 what you are saying?

20          A    No, it was -- it was designed to be -- the  
21 frequency generator is not explicitly 150. It's 150 point  
22 something such that when it multiplies out, it starts  
23 getting higher.

24                It was an understood tool of the time so they  
25 were able to identify what the frequency was going to be.

1 MR. STEWART: Okay. I would like to have marked as  
2 Klein Exhibit 3 a user manual.

3 (Klein Deposition Exhibit  
4 No. 3 was marked as  
5 requested.)

6 MR. STEWART:

7 Q You are now looking at that document, Mr. Klein.  
8 Do you see that document?

9 A Yes, sir.

10 Q Is it a user manual?

11 A To the best of my -- my ability to read it, yes,  
12 it is.

13 Q Okay. And on the page marked MOT 000315 there is  
14 a copyright notice with the dates 1990, 1991; do you see  
15 that?

16 A Yes, I do.

17 Q Is that roughly the time, if you know, that the  
18 STX 800/821 Smartnet products were being sold?

19 A To the best of my knowledge, yes.

20 Q And could you turn to Page 13 of the manual --  
21 it's page MOT 000321.

22 A I'm there.

23 Q And this provides a list of audible tones on the  
24 right-hand side, correct?

25 A Correct.

1 Q Now, the third one is called the Call Back. Is  
2 that the 911 Hz Tone?

3 A Correct, it is.

4 Q And it's described as, "Three short, high pitched  
5 di-di-dit, indicate channel availability". Do you see that?

6 A Yes, I do.

7 Q And if you turn over to the next page on the  
8 left-hand side, Page 14 of the manual, there is a Talk  
9 Permit listing that says "Same as call back"?

10 A Correct.

11 Q Now, -- and that's the 911 Hz Tone as well?

12 A Correct.

13 Q Now, there is no reference to 911 Hz in this  
14 document, is that right?

15 A I have not fully reviewed the document, but it's  
16 my assumption that it is referenced as the Talk Permit or  
17 the Call Back tone.

18 Q And these two tones are in a list of other  
19 audible tones.

20 A Yes.

21 Q And it looks to me like there are 23 of them in  
22 all.

23 A Correct.

24 Q Okay. And are all those tones different from  
25 each other?



1           A    It is my understanding, based upon interaction  
2 with user guides, that if the tone is the same, it would  
3 stipulate that it is the same between the indications of  
4 what the tone means.

5           Q    Okay. As it does with Talk Permit?

6           A    Yes.

7           Q    Okay. If you look below Call Back on 321, there  
8 is Clear Mode Transmit is the next one in alphabetical order  
9 and that's described as a high pitched beep, do you  
10 see that?

11          A    Yes, I do.

12          Q    Now is that beep also at 911 Hz?

13          A    I cannot answer that question. I have not spent  
14 time investigating that particular tone.

15          Q    Are any of the other tones emitted by this radio  
16 -- for these purposes -- emitted at the frequency of 911 Hz?

17          A    I cannot answer the question. I am not -- I've  
18 not researched these tones enough to verify the exact  
19 frequency they operate on.

20          Q    Were all of the tones emitted by the first  
21 product in this line, the 300T, multiples of 150 hertz?

22          A    It is my understanding from discussions that they  
23 were multiples of 150 Hz -- or <sup>150 point-whatever Hz</sup> ~~150 points, whatever Hz.~~

24          Q    150 plus or minus?

25          A    Correct.

1 Q Do you know -- so that presents a somewhat  
2 limited number of potential frequencies at which tones could  
3 be generated, correct?

4 A I believe multiples of 150 Hz.

5 Q Do you know whether any of the other tones in  
6 that radio were at 911 Hz?

7 A Again, I would have to go back and investigate  
8 that particular -- if those tones are consistent, they  
9 should be the same as -- the tones that were in existence in  
10 that product should be consistent with the tones that are  
11 described here in this product.

12 Q Because of your intention to make sure that there  
13 was consistent use across successive products?

14 A Correct.

15 Q And the STX 800 is a successor to the MTX 300T?

16 A Correct, it is.

17 Q Have you looked -- have you looked at any of the  
18 other tones emitted by these 911 Hz Tone products in terms  
19 of analyzing their frequency and cadence and the like?

20 MR. WILLIAMS: Objection, that's vague.

21 A I have not investigated these tones in reference  
22 to 911 -- the 911 Hz Tone.

23 BY MR. STEWART:

24 Q Have you investigated what frequency the other  
25 tones are emitted at?

1           A    No, I have not. I have not investigated the  
2 other frequencies these tones are emitted at.

3           Q    Does the fact that the -- that the first four  
4 tones there or maybe five tones are identified as  
5 "high-pitched" suggest that they are all the same frequency?

6           MR. WILLIAMS:   Objection, that's vague.

7           BY MR. STEWART:

8           Q    Are you able to answer that question. I'm sorry,  
9 I meant to ask you to go ahead and answer.

10          A    It would be presumptuous for me to identify what  
11 intention or what perception a radio would have.

12          Q    Do you know from your actual use of these -- or  
13 experience with these 911 Hz -- I'm sorry.

14                You have actually used 911 Hz Tone product  
15 radios, have you not?

16          A    Yes, I have.

17          Q    Are you familiar based on that experience with  
18 whether more than the Call Back tone is emitted at 911 Hz?

19          A    I cannot say whether more than the Call Back and  
20 Tone Permit tone are at 911 Hz. They are the most often  
21 heard tones that I have in interacting.

22          Q    Do they -- just in terms of frequency alone, do  
23 other tones sound like the same frequency as the Call Back  
24 tone?

25          A    It's difficult to answer because of the different

1     cadences of the tones.

2             Q     You can't distinguish between the cadence and the  
3     frequency of a tone?

4             A     No, the tones are of X -- frequency X pitch. A  
5     majority of the time, I'm not utilizing the features that  
6     interact with other of these tones, or I am just  
7     particularly not paying attention when they come in such  
8     that I would be monitoring whether they are the same tones.

9             Q     Is it possible that multiple tones use the same  
10     frequency on these products?

11            MR. WILLIAMS:    Objection, vague.

12            A     I do not know.

13            MR. STEWART:    Next I would like to have marked as  
14     Klein Exhibit 4 another user manual.

15                               (Klein Deposition Exhibit  
16                               No. 4 was marked as  
17                               requested.)

18            BY MR. STEWART:

19            Q     If you would turn first to the page marked  
20     000269. On the left-hand side, there, page eight of the  
21     manual, there is the Talk Permit and the Call Permit -- I'm  
22     sorry -- Call Back alert tones there as well, do you see  
23     that?

24            A     Yes, I do.

25            Q     And is that the 911 Hz Tone that we are talking

1 about here?

2 A The Talk-Permit tone?

3 Q Yes.

4 A Yes.

5 Q And Call Back also?

6 A Yes.

7 Q And it is described slightly differently from the  
8 previous manual that we looked at, do you see that?

9 A It is -- it is "Dih-dih-dit". The description  
10 specifically -- I need some clarification on the exact --

11 Q It's slightly different, don't you think?

12 A The description of the tone?

13 Q Yes.

14 A There is. There is a greater amount of verbiage  
15 on the second.

16 Q And the second one is the MTX 800. Do you know  
17 where that fits in terms of time? There is not a copyright  
18 date on this one -- vis-a-vis the STX 800?

19 A It is my recollection that the MTX 800 was the  
20 follow-on to the STX products.

21 Q Okay. And over on the page 000271 --

22 A Excuse me, which page?

23 Q 000271, a couple of pages later, under -- in the  
24 upper left-hand side of the page, "Making Dispatch Calls",  
25 that is a description, is it not, of the generation of the

1 911 Hz Tone that we have been talking about?

2 A Yes, it is.

3 MR. STEWART: Okay. Now, one more user manual. I  
4 would like to mark this as Klein Exhibit 5.

5 (Klein Deposition Exhibit  
6 No. 5 was marked as  
7 requested.)

8 MR. STEWART:

9 Q Now, this has a copyright date on the second page  
10 -- no, where is it.

11 MR. WILLIAMS: I think you gave me something extra  
12 here. This isn't part of 5.

13 MR. STEWART: Thank you.

14 A What page are you on?

15 BY MR. STEWART:

16 Q It actually on 2207. There is a 2003 copyright  
17 date.

18 A 2207?

19 Q Right.

20 A There is a 2003 copyright, correct.

21 Q Now, is this a current product?

22 A This is a currently shipping product.

23 Q Do you know whether this is the current user  
24 guide for this product?

25 A This is the current user guide, to the best of my

1 knowledge, specific to the Project 25 version of this  
2 product.

3 Q And what is Project 25?

4 A It is a -- the open -- it's an organization that  
5 has helped to define the APCO communication standard that we  
6 have branded as Astro for our features and functions that  
7 support that standard.

8 Q And that standard is an interoperability  
9 standard, is that right?

10 A It is an open protocol, so it does create  
11 interoperability.

12 Q Now, if you turn to 2215, which is page six of  
13 the guide, you see here we have the list of tones again?

14 A Correct.

15 Q This one is different because it is -- the tones  
16 are grouped together with -- under a "Sound" description, do  
17 you see that?

18 A Yes, I do.

19 Q If you turn over to the page labeled 2217 which  
20 is page eight of the user guide --

21 A Correct.

22 Q Do you see under "Sound" it says, "A Group of  
23 Medium-pitched Tones", do you see that?

24 A Yes, I do.

25 Q And Talk Permit is one of those tones?

1           A    Yes, it is.

2           Q    Now, does that mean that the -- that the  
3 frequency of the tone was changed in this product?

4           A    No, it was not.

5           Q    But it's described as medium-pitched as opposed  
6 to high-pitched here?

7           A    Yes, it is.

8           Q    Do you know why that is?

9           A    It's my understanding -- and this is strictly  
10 based upon personal experience in helping to work on these  
11 manuals -- that there was an attempt to help organize these  
12 tones so that it was easier to reference.

13          Q    And they were thus grouped by -- I guess for this  
14 purpose, it's the pitch or frequency, right, the group of  
15 medium-pitched tones, is that right?

16          A    And a majority of these tones are grouped in that  
17 manner.

18          Q    And for the group of medium-pitched tones that  
19 includes the Talk-Permit tone, do you know whether all of  
20 those tones used the same frequency?

21          A    I cannot at this point say.

22          Q    You are presenting this to a user as a group of  
23 tones that are related in terms of their pitch, is that  
24 right?

25          A    Yes, we are.



1           Q    But you don't know whether the pitch is actually  
2   the same?

3           A    I do not to for sure.   I would have to  
4   investigate.

5           Q    If the pitch were the same, what would be the  
6   basis on which to distinguish from among these tones?

7           A    My assumption, purely my assumption, would be  
8   cadence and length, over all length of tones.

9           Q    And there is no indication of cadence and length  
10   for this group of tones, right?

11          A    No, there is not, not that I see.   I do not know  
12   if there is additional information, and I have not fully  
13   reviewed this document.

14          Q    Do you want to take a minute to flip through that  
15   and see if you find anything else?

16          A    Yes.

17          Q    Where are you looking?

18          A    On page -- I selected Dispatcher-Interrupt on  
19   page 44, MOT 002253.   "Dispatcher-Interrupt:   The  
20   Dispatcher-Interrupt feature allows the dispatcher to  
21   interrupt your radio and place you in a private conversation  
22   call with a dispatcher.

23                "When you receive -- when your radio receives a  
24   Dispatcher-Interrupt call, you hear a repeating sequence of  
25   four, short medium-pitched tones until you answer the call".

1                   That is different than the description for the  
2 Talk Permits.

3                   Q     Okay.

4                   MR. STEWART:   This would be a good place for me to  
5 break for lunch if you are ready to do that.

6                   MR. WILLIAMS:   That's fine.

7                   THE VIDEOGRAPHER:   This is the Videographer. The  
8 time is 12:30 p.m. We are going off the record.

9                                       (Whereupon, at 12:30 p.m., the  
10 deposition was recessed, to  
11 reconvene at 1:30 p.m., this  
12 same day.)  
13  
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## AFTERNOON SESSION

(1:38 p.m.)

THE VIDEOGRAPHER: We are going back on the record. This marks the beginning of videotape Number Two, Volume One, in the deposition of David Klein. The time is 1:38 p.m.

DAVID ERIC KLEIN,  
the witness at the time of recess, having been previously duly sworn, was further examined and testified as follows:

## EXAMINATION(resumed)

BY MR. STEWART:

Q Good afternoon, Mr. Klein. What was the alleged date of first use of the 911 Hz Tone as a mark in commerce according to Motorola?

MR. WILLIAMS: Objection, that calls for a legal conclusion based on Patent and Trademark Office filings. This witness is a fact witness.

BY MR. STEWART:

Q Please answer.

A Can you clarify commerce. I'm not sure of the answer nor do I understand the statement of commerce.

Q It's evident from the face of the trademark application that we have already introduced into the record

1 that Motorola has asserted that the date of first use of the  
2 911 Hz Tone as a mark in commerce is May 6, 1991. Are you  
3 aware of that?

4 MR. WILLIAMS: Objection. Again, that's a legal  
5 conclusion based on Legal Department filings.

6 BY MR. STEWART:

7 Q Are you aware of the date May 6, 1991 as having  
8 been asserted to the Patent and Trademark Office, as the  
9 date of first use?

10 A I'm aware -- I read that date in one of the  
11 documents.

12 Q That's all I'm asking. Good.

13 What happened on that date?

14 A You've got to clarify, if you could, please.

15 Q What about May 6, 1991 led Motorola to assert it  
16 as a date of first use of the mark in commerce?

17 MR. WILLIAMS: Objection. Again, this is a question  
18 relating to a legal filing in the Patent and Trademark  
19 Office.

20 A I'm unaware of the specific events that occurred  
21 on that particular date.

22 BY MR. STEWART:

23 Q Have you sought to find out what happened on that  
24 particular date?

25 A No, I have not.

1           Q    Was there any difference in the 911 Hz products  
2   that manifested itself on May 6, 1991?

3           A    To the best of my knowledge, the consistency that  
4   has occurred with the tones, the 911 Hz, before and after  
5   the -- the May 11th, 1991 --

6           Q    May 6th.

7           A    I'm sorry, May 6th, 1991, those tones were  
8   consistent before and after that date.

9           Q    Was there any other change in the products in  
10   which the 911 Hz Tone was incorporated on or around May 6,  
11   1991?

12          A    The only product change would be the availability  
13   of potentially additional products that utilize the 911 Hz  
14   Tone.

15          Q    When did that happen?

16          A    That's a consistent process as we develop the  
17   products. This was -- that was a timeframe where we were  
18   developing the MTX, MTS variant of products.

19          Q    Particularly in May of 1991, was there any  
20   product introduction or any other change in the products  
21   themselves?

22          A    I do not know of any particular change associated  
23   with that specific date. I'm not aware of any.

24          Q    Was there a change in May of 1991 in the  
25   marketing of 911 Hz Tone products?

1           A    I'm unaware of any change or deviation from the  
2 consistent marketing of the 911 Hz.

3           MR. STEWART:   I would like to have marked as Klein  
4 Exhibit 6 a document entitled "911 Hz Tone Information."

5                               (Klein Deposition Exhibit  
6                               No. 6 was marked as  
7                               requested.)

8           MR. STEWART:

9           Q    Have you seen this document before?

10          A    I have seen this document before.

11          Q    What is it?

12          A    It's my understanding that this document  
13 stipulates -- stipulates products that used the 911 Hz Tone.

14          Q    Who is -- or what is TAG Marketing, T-A-G  
15 Marketing?

16          A    The America Marketing -- The America Group  
17 Marketing.

18          Q    And who are they?

19          A    It is the marketing group that is specific to  
20 North America and Canada.

21          Q    The marketing group within Motorola?

22          A    I'm sorry, for clarity, it is the GEMS subscriber  
23 marketing group, the group that is used for defining the  
24 products, subscriber products that work on infrastructure  
25 and conventional operation for North America, particularly

1 the direct sales force.

2 Q When you talk about subscriber infrastructure and  
3 conventional products for North America, what -- what's  
4 meant by the term "subscriber" in that context?

5 A Subscriber is our internal nomenclature to define  
6 a hand-held radio or radio that gets installed in a vehicle  
7 of that type -- a mobile portable type of device.

8 Q As opposed to?

9 A As opposed to infrastructure which would be an  
10 installed tower and such.

11 Q So when did you first see this document?

12 A I did see this in March of this year.

13 Q What were the circumstances?

14 A The circumstances were I helped to collect the  
15 information that appeared -- this listing of features -- or  
16 excuse me, of products.

17 Q So you directed the TAG Marketing people to  
18 collect this information?

19 A I am part of the TAG Marketing team.

20 Q I see. So who actually collected the  
21 information?

22 A It was myself on behalf of my manager to collect  
23 this information.

24 Q So you produced this document to begin with?

25 A I do not know if I produced this particular

1 variance. This is the information I provided. To the best  
2 of my knowledge, it appears to be the information I turned  
3 over to my manager.

4 Q Is this the complete document?

5 A It appears to be from what I am aware of -- from  
6 my interaction.

7 MR. STEWART: I would like to mark as Klein Exhibit 7  
8 a one-page document entitled, "Post-1991 Indirect Radios  
9 with 911 Hz Trunking Clear-to-Talk or Talk-Permit Tone".

10 (Klein Deposition Exhibit  
11 No. 7 was marked as  
12 requested.)

13 BY MR. STEWART:

14 Q Have you seen that document before?

15 A I've not seen this particular document.

16 Q Okay. Going back to 6, who asked for the  
17 collection of the information about 911 Hz Tone products?

18 MR. WILLIAMS: Objection, that's vague.

19 BY MR. STEWART:

20 Q I'm sorry. I will rephrase that. Who asked for  
21 the information that is presented in Exhibit 6?

22 A This information was requested on behalf of my  
23 manager.

24 Q And who is your manager again?

25 A Kurt Brasch  
~~Curt Braesh.~~